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001885 APR 16 2001

No. _____

In the Supreme Court of the United States

October Term, 2000

Ricardo Felipe Junco,

Petitioner,

v.

Harry Singletary,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT

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QUESTIONS PRESENTED FOR REVIEW

1. Whether Petitioner was denied the right to due process under the Fifth and Fourteenth Amendments to the United States Constitution.

2. Whether Petitioner was denied the right to effective assistance of counsel under the Sixth Amendment.

PARTIES TO THE PROCEEDINGS BELOW

The parties to the proceedings in the United States District Court were Harry Singletary, Secretary of Florida Department of Corrections and Ricardo Felipe Junco, Petitioner-Appellant.

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Petitioner. Ricardo Felipe Junco. respectfully prays that a Writ of Certiorari issue to review the opinion of the United States Court of Appeals for the Eleventh Circuit entered in this proceeding on January 16. 2001.

OPINION BELOW

On June 19, 1997, Junco[1] filed a *pro se* petition for a writ of habeas corpus[2] pursuant to 28 U.S.C. § 2254. (RE Petition p.2-7) On July 7, 1998, Magistrate Judge Sorrentino filed a report of magistrate judge that recommended the denial of the petition. (RE Report p. 1-9) The report of magistrate judge is reproduced as Appendix A, p. A1. Thereafter, on October 30, 1998, the District Court entered an order allowing the petition for writ of habeas corpus to proceed on its merits. (RE Order p. 1-2) The order allowing the petition to proceed on its merits is reproduced as Appendix B, p. B1.

On April 12, 2000, Magistrate Judge Sorrentino filed a supplemental report that recommended the denial of the petition. (RE Supplemental Report p. 1-19) The

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[1] Petitioner/Appellant Ricardo Felipe Junco will be hereinafter referred to as "Junco". Respondent/Appellee Harry Singletary will be hereinafter referred to as "Respondent".

[2] The record on appeal is designated as (R.) with appropriate docket number. Reference to documents in the record excerpts is designated as (RE) with reference to the document and to the page of the original document.

supplemental report is reproduced as Appendix C. p. C1. Subsequently, on June 16. 2000, the District Court denied Junco's habeas corpus petition without the benefit of an evidentiary hearing. (RE Final Judgment) The Final Judgment of the District Court is reproduced as Appendix D. p. D1. It is from that decision that Junco filed a timely appeal to the United States Court of Appeals for the Eleventh Circuit who after a *de novo* review affirmed the decision of the District Court. The opinion of the court of appeals is reproduced as Appendix E. p. E1.

JURISDICTION

The judgment of the court of appeals was entered on January 16. 2001. The petition for a writ of certiorari was filed on April 14. 2001. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

Rule 3.216(a). Florida Rules of Criminal Procedure (1986) pertaining to competency evaluations[3]. provides as follows:

> When in any criminal case counsel for the defendant adjudged to be indigent or partially indigent ... shall have reason to believe that the defendant may be incompetent to proceed ... counsel may so inform the court who shall appoint one (1) expert to examine the defendant in order to assist counsel in the preparation of the defense.... (emphasis added)

STATEMENT OF THE CASE

On September 15. 1986. Junco was charged by information with armed burglary (Counts I and VIII). armed kidnapping (Counts II-III. XVI-XX). armed robbery (Counts IV-V. XI-XV). second degree grand theft (Counts VI. XXI). aggravated battery with a firearm (Count VII). sexual battery (Counts IX-X). first degree grand theft (Count XXII). and trafficking in cocaine (Count XXIII). (DE 9. Ex. A) The

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[3] It must be noted that at this time in the proceedings the Petitioner was being represented by appointed counsel.

charges stemmed from incidents surrounding three separate home invasion robberies.

Junco was tried before a jury in March 1987 and was convicted of all offenses charged. with the exception of being found guilty only of a lesser-included offense on both sexual battery counts. and of being acquitted of trafficking in cocaine. (DE 9. Ex. B) On March 3. 1987. he was sentenced to sixteen consecutive terms of life imprisonment. followed by four consecutive terms of 15 years in prison. and by two terms of five years in prison. (DE 9. EX. B)

The Friday before the Monday trial date. the trial judge in the instant state case granted Junco a psychiatric examination:

> THE COURT:...All right. if that is what you need. I will have [Jackson Memorial Hospital evaluate him. . .

[DE 5 at 28]. However, the Monday of trial. when the trial judge learned that the evaluation had not taken place. she went forward with trial:

> I am not going to allow that [the failure to have the Defendant examined] to be cause for the delay of trial.

[DE 34 at 4]

Junco's appointed counsel appealed his conviction to a Florida court of appeals, claiming only that the trial court erred in sentencing him. The Florida appellate court reversed his sentence and remanded for resentencing. *See*, Junco v State, 540 So.2d 898 (Fla. Dist. Ct. App. 1989)(per curiam) After the trial court resentenced him, Junco again appealed. The appellate court again reversed in part and remanded, and the trial court again resentenced him. *See*, Junco v State, 571 So.2d 570 (Fla. Dist. Ct. App. 1990).

In 1992, Junco made a motion for post-conviction relief pursuant to Rule 3.850, Fla.R.Crim.P., where he raised several issues, including one of the due process claims and the ineffective assistance of counsel claim raised in this case. The Court rejected the ineffective assistance of counsel claim on its merits and denied the due process claim because it "should have been properly raised before the Third District

Court of Appeal in the appellate process." *See.* State v Junco, Eleventh Judicial Circuit in and for Dade County, Florida. Trial Hearing Transcript. Case No. 86-11397. September 16. 1992). A Florida court of appeals affirmed the trial court's decision without written opinion. *See.* Junco v State, 608 So.2d 29 (Fla. Dist. Ct. App. 1992)(table).

In 1992. Junco filed a second 3.850 motion for post-conviction relief in which he raised the competency due process claim, which is the underlying basis of this request. The trial court denied Junco's petition because it argued the claims were procedurally barred and a Florida appellate court affirmed, again without opinion. *See.* Junco v State, 651 So.2d 687 (Fla. Dist. Ct. App. 1995)(table). Junco then filed the instant action for writ of habeas corpus which the district court as well as the court of appeals have reasoned that state-law default – failure to raise the issues on direct appeal – prevent them from reaching the merits of Junco's claims.

The procedural aspects of Junco's case are further discussed and incorporated in the Report of Magistrate Judge

dated July 7, 1998 (Appendix C and the judgment of the court of appeals Appendix E)

REASONS FOR GRANTING THE WRIT

Junco asserts, in claim one of his Petition for Writ of Habeas Corpus, that he was denied due process when the trial judge failed to assess Junco's competency pursuant to Rule 3.216(a), Fla.R.Crim.P. (1986). It must be noted that the trial court did hear the request and did grant the request for competency evaluation. However, the competency evaluation was never performed and the trial court refused to delay the proceedings in order to have it done.

As discussed in the Statement of the Case, supra, this claim was presented to the state courts where it was denied on the basis that the claim was procedurally barred because it could have been raised on direct appeal. The district court denied relief applying the proposition that when a state court has applied a procedural bar to a claim, that claim is likewise barred from federal habeas corpus review. (Appendix A) However, "[t]he procedural default rule of Wainwright v.

Sykes, 433 U.S. 72, 97 S.Ct. 2497, 53 L.E.2d 594 (1977), does not operate to preclude a defendant who failed to request a competency hearing at trial or pursue a claim of incompetency on direct appeal from contesting his competency to stand trial and be sentenced through post-conviction proceedings." *Horace v. Wainwright*, 781 F.2d 1558, 1565 (11th Cir. 1986), cert. denied, 479 U.S. 869 (1986) (quoting from *Adams v. Wainwright*, 764 F.2d 1356 at 1359 (11th Cir. 1985) (citations omitted) (emphasis added).

The court of appeals reviewed these claims *de novo* (Appendix E) but reasoned that Junco's claim was of a *Pate v Robinson*, 383 U.S. 375 (1966) nature which "can and must be raised on direct appeal." (Appendix E) citing *James v Singletary*, 957 F.2d. 1562 (11th Cir. 1992)

Junco's competency issue is quite different than *Pate v Robinson*, supra, and requires different consideration.[4]

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[4] At issue is not whether Junco was sane at the time of the offenses allegedly committed, but whether he was mentally competent to stand trial, understand the proceeding against him and assist in his defense. *Bishop v. United States*, 223 F.2d 582, 584 (D.C. Cir. 1955) (vacated with directions to conduct a hearing on the sanity of the petitioner at the

Here, the trial court on the Friday before trial clearly and unequivocally addressed the issue of Junco's competency and ordered a psychiatric evaluation. In deed, such an evaluation was mandatory under the facts of the case. Under Florida law when defense counsel informs the Court that he has reason to believe that his indigent client is incompetent to stand trial, the Court does not have discretion and must appoint an expert to examine the accused. *State v. Hamilton*, 448 So.2d 1007 (Fla. 1984)(emphasis added). Further, it is a well-settled rule of law that failure to provide an adequate hearing on competency deprives a defendant of his due process rights to a fair trial. *Beans v. Black*, 757 F.2d 933, 935 (8th Cir.), cert. denied, 479 U.S. 979 (1985). Accordingly, Junco was deprived of his due process rights and the writ should have been granted.

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time of his trial) *Bishop v. United States*, 350 U.S. 961 (1956). "[T]he test must be whether he has sufficient present ability to consult with his lawyer with a reasonable degree of rational understanding and whether he has a rational as well as factual understanding of the proceedings against him." *Dusky v. United States*, 362 U.S. 402 (1960)

Junco contends that he was denied due process when the trial judge failed to assess Junco's competency pursuant to Rule 3.216(a), Fla.R.Crim.P. (1986). The uncontroverted fact is that the trial Court ordered an evaluation pursuant to counsel's request under this rule and Junco's contention is that the evaluation so ordered was not performed and he was brought to trial without compliance with the trial court's order.[5]

The express language of Rule 3.216(a), Fla.R.Crim.P. (1986) (emphasis added) provides as follows:

> When in any criminal case counsel for the defendant adjudged to be indigent or partially indigent ... shall have reason to believe that the defendant may be incompetent to proceed ... counsel may so inform the court who shall appoint one (1) expert to examine the defendant in order to assist counsel in the preparation of the defense....

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[5] Junco contends that this was a factual determination binding on the reviewing court unless clearly erroneous. *King v Moore*, 196 F.3d 1327 (11th Cir. 1999)

In other words, Junco's contention is, as he has impliedly done throughout these proceedings[6], that by ordering the psychiatric (competency) examination the trial court acknowledged that there was "reason to believe that the defendant may be incompetent to proceed " to trial and that is a "substantive claim of incompetency" which is not subject to the application of any state-law default. Particularly when there was never a determination that Junco was ever competent to stand trial.[7]

We do recognize that there may be a presumption as to "competency" but that presumption would have been overcome and the burden shifted to the state once Junco was granted a competency evaluation by order of the trial court.

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[6] We should recall that Junco filed a *pro se* petition.

[7] A competency hearing is required when " there was reasonable ground for the trial court to have believed that appellant was incompetent and that he did not have a sufficient present ability to consult with his lawyer or assist in the presentation of his defense." Scott v State, 420 S. 2d 595, 597 (Fla. 1982) Accordingly, if a competency hearing is ordered it is because there was reasonable ground to believe that the appellant is incompetent and does not have a sufficient present ability to consult with his lawyer or assist in the presentation of his defense.

Similarly argued and related to the competency issue is Junco's right to effective assistance of counsel. An analysis focusing solely on mere outcome determination, without attention to whether the result of the proceeding was fundamentally unfair or unreliable, is defective. *Lockhart v Fretwell*, 506 U.S. 364, 113 S.Ct 838 at 843 (1993) As the Court indicated, "in *Strickland*,[8] we identified the two components to any ineffective-assistance claim: (1) deficient performance and (2) prejudice." Id at 842.

The court's reasoning does not acknowledge the significance of the mandated psychiatric evaluation and substitutes their judgment for that of the trial court who saw Junco's conduct and performance at the time. Further, this analysis does not take into consideration the underlying factual basis which was before the trial court at the time it granted the requested psychiatric evaluation. As in *Lockhart*, we would have wanted to determine if the "counsel's deficient performance renders the result of the trial unreliable

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[8] *Strickland v Washington*, 466 U.S. 668 (1984)

or the proceeding fundamentally unfair." *Supra*, at 372. The psychiatric evaluation would have given us that assurance.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the Petition for a Writ of Certiorari should be granted.

Respectfully submitted.

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